

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
July 13, 2006 Session

**EDGAR BEATY, ET AL. v. DONNIE WRIGHT, ET AL.**

**A Direct Appeal from the Chancery Court for Fentress County  
No. 03-73 The Honorable Billy Joe White, Chancellor**

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**No. M2005-01452-COA-R3-CV - Filed on October 27, 2006**

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This case arises from a boundary line dispute. The Plaintiff/Appellee filed suit against Defendants/Appellants alleging that Defendants/Appellants encroached upon Plaintiff/Appellee's land to log. Defendants/Appellants assert that they are the rightful owners of the disputed tract. Based largely upon a finding of credibility, the trial court ruled that the disputed tract was owned by Plaintiff/Appellee. Finding that Plaintiff/Appellee has proved titled by acquiescence, we affirm.

**Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Chancery Court Affirmed**

W. FRANK CRAWFORD, P.J., W.S., delivered the opinion of the court, in which ALAN E. HIGHERS, J. and DAVID R. FARMER, J., joined.

James P. Romer of Jamestown, Tennessee for Appellants, Donnie and Jennifer Wright

Onnie L. Winebarger of Byrdstown, Tennessee for Appellee Edgar Beaty

**OPINION**

By Deed dated March 11, 1944 and recorded at Book I-3, Page 29 in the Register's Office of Fentress County, Tennessee, three tracts of land were conveyed to Ernest Beaty. The three tracts contained 50 acres, 3 acres, and 125 acres respectively for a total of 178 acres (together the "Property"). Ernest Beaty was married to Mazie Beaty and they had seven children, Norma Beaty Wright, Treva Mifflin, Margaret Beaty Smith, Marcella Beaty Gunter, Dewel Beaty, Luther Beaty, and Edgar Beaty. By Deed dated July 23, 1977 and recorded at Book L-5, Page 63 in the Register's Office of Fentress County, Ernest Beaty transferred title to the Property to his wife, Mazie. By Deed dated April 21, 2000 and recorded at Book H-8, Page 157 in the Register's Office of Fentress County, Mazie Beaty transferred the Property to her seven children, reserving a life estate for herself. Following Mazie Beaty's death, her children divided the Property into seven individual tracts, which they, as owners in common, deeded to each other—one tract to each sibling. Tract Five was deeded to Norma Beaty Wright by General Warranty Deed dated May 27, 2002 and recorded at Book 31,

Page 417 in the Register's Office of Fentress County. Norma Beaty Wright is the mother of Defendant Donnie Wright (along with his wife, Jennifer, the "Wrights," "Defendants," or "Appellants").

Tract Six, which adjoins Tract Five to the West, was deeded to Edgar Beaty ("Plaintiff," or "Appellee").<sup>1</sup> The transfer was made by General Warranty Deed dated May 27, 2002 and recorded at Book 29, Page 498 in the Register's Office of Fentress County. The property description in the deed describes Tract Six as follows:

Beginning on an iron rod in the west line of Tract Five of the division of the Ernest Beaty Heirs property, the same being the northeast corner of the tract herein described, thence with the west line of Tract Five; south 21° 06' 05" east 338.03 feet to an iron rod, south 03° 51' 46" west 233.79 feet, and south 00° 18' 02" west passing an iron rod at 509.81 feet in all a total distance of 539.89 feet to the center of an old road bed comprising the southern boundary of the parent tract; thence with the center of same north 75° 34' 18" west 35.08 feet, north 50° 24' 18" west 44.97 feet, north 41° 45' 23" west 70.48 feet, north 60° 18' 51" west 32.53 feet, north 80° 34' 00" west 25.93 feet, and north 88° 41' 38" west 69.20 feet; thence with the east line of Tract Seven; north 46° 33' 27" west 999.95 feet to a chestnut oak on a bluff; thence north 33° 07' 08" east 1,654.37 feet with the original line of the parent tract as identified by the Ernest Beaty Heirs to an iron rod in an old fence row at the northwest corner of Tract Five; thence with the west line of said tract south 2° 13' 25" west 1,097.96 feet to the point of beginning. Containing 13.02 acres as surveyed by Richard B. Cowan...dated 12-15-01.

Mr. Beaty's Deed mistakenly calls for the beginning point to be the northeast corner of Tract 6 and mistakenly claims 13.02 acres. However, the attached Cowan survey shows Tract Six as containing 23.73 acres and shows that the beginning point is not the northeast corner of the tract but is a point in the eastern boundary line of Tract 6.

In 2003, the Wrights purchased a tract of land located to the West of Edgar Beaty's Tract Six. The transfer was made by Special Warranty Deed recorded June 24, 2003 at Book 48, Page 159 in

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<sup>1</sup> We note that Edgar Beaty's brother Luther is also listed as an Appellee in this matter. As discussed *infra*, Luther Beaty joined in the Complaint asserting a cause of action arising from a dispute over an easement encumbering his tract. The easement cause of action was distinct and separate from Edgar Beaty's cause of action concerning the boundary line dispute. Luther Beaty's easement dispute was decided early in the litigation, by Order of November 21, 2003, and no issues regarding same have been raised in this appeal. Because only issues concerning the boundary dispute advanced by Edgar Beaty are presented for review, we will consider and refer to Edgar Beaty as if he were the sole Appellee in this cause.

the Register's Office of Fentress County. The Wrights' Deed describes their property as including 228.05 acres, and reads as follows:

Lying and being in the Third Civil District of Fentress County, Tennessee and beginning on a painted rock, being the southwest corner of Beaty (Deed Book I-3, Page 30) and a corner of Currence and Edwards (Deed Book E-8, Page 273); thence with Currence and Edwards and a red painted line south 17° 15' West 350.78 feet to an axle; thence South 84° 19' West 237.12 feet to an axle at a 30 inch chestnut oak; thence South 24° 34' West 321.36 feet to a point on the ridge; thence South 70° 51' West 657.77 feet to an axle on the ridge; thence North 21° 34' West 999.87 feet to an iron pin at a poplar, being a corner of Currence and Edwards (Deed book 1, Page 174); thence continuing with Currence and Edwards and a red painted line North 24° 20' West 795.41 feet to an iron pin at a poplar thence North 32° 20' East 411.60 feet to a beech marked with an X; thence North 27° 39' East 307.14 feet to a 14 inch beech; thence North 54° 20' East 1747.52 feet to an iron pin at a 6 inch beech; thence North 11° 56' West 158.88 feet; thence North 14° 54' West 655.20 feet; thence North 16° 12' West passing an iron pin at 317.11 feet, in all a total distance of 324.39 feet to a point in the center Crickett Creek and a corner of Currence and Edwards (Deed Book Y-7, Page 691); thence with the center of Crickett Creek and with Currence and Edwards North 58° 18' East 185.71 feet; thence North 55° 25' East 284.36 feet; thence North 55° 42' East 225.38 feet; thence North 19° 58' East 73.25 feet; thence North 66° 43' East 99.88 feet; thence North 82° 17' East 84.60 feet; thence North 45° 47' East 64.07 feet; thence North 30° 44' East 50.78 feet; thence North 09° 08' East 96.11 feet; thence North 33° 08' East 117.13 feet; thence North 26° 43' East 193.08 feet; thence North 29° 27' East 129.45 feet; thence North 56° 32' East 61.73 feet; thence North 39° 48' East 102.58 feet; thence leaving the creek and continuing with Currence and Edwards, a red painted line in the center of a hollow South 31° 42' East passing an iron pin at a poplar at 7.63 feet, in all a total distance of 79.32 feet; thence South 63° 32' East 38.70 feet; thence South 25° 11' East 115.68 feet; thence South 12° 05' East 103.94 feet; thence South 39° 58' East 138.78 feet; thence North 88° 54' East 126.10 feet; thence South 77° 17' East 245.24 feet; thence South 76° 59' East 131.46 feet; thence South 53° 27' East 106.54 feet to a steel post, being a corner of Currence and Edwards (Deed Book 17, Page 526); thence continuing with Currence and Edwards, the center of a hollow and a red painted line South 57° 34' East 176.19 feet; thence South 28° 49' East 32.02 feet; thence South 38° 26' East 66.03 feet; thence South 44° 14' East 274.10 feet; thence South 50° 33' East 142.22 feet to a 16 inch maple, being a

corner of Beaty; thence leaving the hollow and continuing with a red painted line and Beaty South 60° 58' West 858.82 feet to an iron pin; thence South 37° 26' East 936.07 feet to an iron pin; thence South 34° 09' West 445.89 feet; thence South 07° 10' West 212.91 feet; thence South 37° 54' West 29.12 feet to a steel post; thence South 70° 03' East 132.04 feet; thence South 41° 21' West 64.46 feet; thence South 39° 07' West 402.58 feet; thence South 53° 42' West 402.83 feet; thence South 59° 47' West 513.89 feet; thence South 43° 20' West 257.75 feet; thence South 37° 05' West 419.60 feet; thence South 33° 49' West 37.41 feet to the beginning. Containing 228.05 acres, more or less as surveyed by Tom B. Thaxton . . . on August 15, 2002. There is a continuous red painted line around the above described property. The painted line is approximately 35 years of age.

Following the Wrights' purchase of their property, a dispute arose between the Wrights and Edgar Beaty concerning the common boundary line (i.e. the eastern boundary of the Wrights' property and the western boundary of Edgar Beaty's property) between their respective properties. On August 18, 2003, Edgar Beaty and Luther Beaty, *see* fn. 1, filed a Complaint against the Wrights. The Complaint reads, in relevant part, as follows:

6. The children of Ernest Beaty did have the lands of Ernest Beaty surveyed and Edgar Beaty did receive a tract of 23.73 acres, more of less....
7. Donnie Wright and wife Jennifer Wright did purchase a certain tract lying, in part, west of the Edgar Beaty tract....
8. Edgar Beaty had his eastern boundary line clearly marked with red paint.
9. In July 2003, Edgar Beaty discovered that Donnie Wright and/or his agents pushed a road across Edgar Beaty's eastern boundary line onto his aforesaid 23.73 acre tract. Edgar Beaty talked to Donnie Wright by telephone and told him to stay off his property.
10. Donnie Wright and/or his agents have again pushed another road across his eastern boundary line onto Edgar Beaty's aforesaid 23.73 acre tract and has cut some timber from his tract, causing damages for the loss of timber. Edgar Beaty installed a fence across the road and Donnie Wright removed it.
11. The actions of Donnie Wright of pushing roads onto the lands of Edgar Beaty and cutting timber on the lands of Edgar Beaty

constitutes trespass and was done intentionally, willfully and with reckless disregard to the rights of Edgar Beaty, and Edgar Beaty is entitled to receive actual damages as well as punitive damages from actions of Donnie Wright for the aforesaid actions.

12. The tract purchased by Donnie Wright and wife Jennifer Wright has historically been described [as] 75 acres and bounded on the east by the lands of Ernest Beaty. The deed to Donnie Wright and wife Jennifer Wright...now contains a survey description calling for 228.05 acres, and does have an eastern boundary on "Beaty" but the eastern boundary of Donnie Wright and his wife Jennifer Wright does not appear to match the western boundary line of Edgar Beaty, and the court should establish and fix the true boundary between the two tracts.

The Wrights filed their Answer on September 24, 2003, which Answer reads, in pertinent part, as follows:

6. The defendants admit that there were attempts made by surveyors who may or may not have [been licensed] to survey the lands of Ernest Beaty. It is admitted that Edgar Beaty recorded a deed with a plat showing 23.73 acres but with a legal description that states that the tract contains 13.02 acres, more or less.... [H]ad the survey that was originally drawn been used it would have been 13.02 acres.... The chestnut oak on the bluff shown on the Tract 6 plat of the 23.73 acres was the original northwest corner of the 13.02 acre tract and the iron rod set on the east side of the 23.02 acre tract was the original northeast corner of the 6 acre tract that was to go to Edgar Beaty. The defendants allege that any property north of the red painted line which defines the boundary of the Edgar Beaty Heirs Tract and the boundary of land purchased by the defendants...is an encroachment and does not belong to Ernest Beaty or his heirs.

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8. Whether or not Edgar Beaty had his east line marked in red paint, the Edgar Beaty Tract borders the defendants only on the south as shown on the original Tract 6 for 13.02 acres providing that that survey follows the red paint.

9. It is denied that Donnie Wright or his agents crossed any of Edgar Beaty's boundary line to log. Edgar Beaty's claim is an invalid claim.

He does not own the area where defendant, Donnie Wright, or his agents made a road.

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12. Paragraph 12 is admitted, however, acreages were given by estimate before surveys. The Court should establish the boundary line with the red paint line and by the survey of Surveyors Thaxton and Goad which follow the red painted line.

On September 28, 2004, the trial court granted a temporary injunction enjoining the Wrights from crossing onto the lands (approximately 10.71 acres) claimed by Edgar Beaty.

The matter was heard by the trial court, sitting without a jury, on November 30, 2004. On April 29, 2005, the trial court entered an "Interlocutory Order Setting Boundary Lines," which reads, in relevant part, as follows:

[The] Court finds that Edgar Beaty is a credible witness and the Court accepts his statements as true. The Court finds that there was a planted stone corner located west of the line between the chestnut oak on the bluff and the rod set in an old fence as shown in the survey of Tract 6.... The heirs of Ernest Beaty did establish a new line between the chestnut oak on the bluff and the iron rod set in an old fence as shown on the survey of Tract 6... and this new line is within the boundary of Ernest Beaty and all the property in Tract 6 as shown in the survey...was the property of Ernest Beaty. Therefore, the Court finds that Edgar Beaty is the lawful owner of the property shown as Tract 6 in Exhibit No. 2 [i.e. the entire 23.73 acres] and, therefore, the Court does establish the line being between the chestnut oak on the bluff and the iron rod set in the old fence as the boundary line between Edgar Beaty and the Defendants....

The Court notes that the survey of Tract 6 as shown on Exhibit No. 2 is the same survey which is attached to the deed of Edgar Beaty as recorded in record Book 29, Page 497 in the Register's Office of Fentress County, Tennessee.

The trial court reserved the issue of damages. The damages portion of the case was heard on May 31, 2005. By Order of May 31, 2005, the trial court awarded Edgar Beaty \$11,136.00 "for the value of the timber cut," \$557 "for site damages," and \$1,230.00 in discretionary costs. The May 31, 2005 Order specifically states that this "Order together with the previous Interlocutory Order filed in this cause constitutes a Final Order from which appeal may be taken." The Wrights appeal and raise two issues for review, as stated in their brief:

I. Whether the plaintiff clearly proved he is the owner of the disputed tract.

II. Whether the evidence preponderates in favor of the boundary line being established as shown by the defendants in this case.

Because this case was tried by the court sitting without a jury, we review the case de novo upon the record with a presumption of correctness of the findings of fact by the trial court. Unless the evidence preponderates against the findings, we must affirm absent error of law. *See* Tenn. R. App. P. 13(d). Furthermore, when the resolution of the issues in a case depends upon the truthfulness of witnesses, the trial judge who has the opportunity to observe the witnesses in their manner and demeanor while testifying is in a far better position than this Court to decide those issues. *See McCaleb v. Saturn Corp.*, 910 S.W.2d 412, 415 (Tenn.1995); *Whitaker v. Whitaker*, 957 S.W.2d 834, 837 (Tenn. Ct. App.1997). The weight, faith, and credit to be given to any witness's testimony lies in the first instance with the trier of fact, and the credibility accorded will be given great weight by the appellate court. *See id.*; *see also Walton v. Young*, 950 S.W.2d 956, 959 (Tenn.1997).

This Court has compared the legal descriptions given in the Wrights' Deed and Mr. Edgar Beaty's Deed to the surveys of their respective properties included in this record. It appears that both deeds include the disputed 10.71 acres. Although the respective chains of title of the parties are fairly complete in the record, it is impossible, without surveys, to determine when the boundary dispute arose and, in point of fact, which party's chain of title first claimed ownership of the disputed land. Furthermore, although we know from the Ernest Beaty Deed that he purchased approximately 178 acres of land, the plats/surveys of the original Property after its partition into seven individual tracts does not square with the original acreage.<sup>2</sup> Therefore, based upon the documentary evidence contained in this record, this Court begins its inquiry with both parties having equal right to the disputed acreage. Consequently, ownership must be proved by some other theory such as adverse possession or title by acquiescence. Neither party herein relies upon the doctrine of adverse possession. However, we cannot disregard a possible agreement or acquiescence as to the true boundary line. In *Franks v. Burks*, 688 S.W.2d 435 (Tenn. Ct. App. 1984), this Court stated:

An unascertained or disputed boundary line dividing the lands of adjoining property owners may be established by a parol agreement between the land owners, and the agreement does not fall within the prohibition of the statute of frauds. *Thornburg v. Chase*, [606 S.W.2d 672 (Tenn. Ct. App. 1980)]; *Webb v. Harris*, 44 Tenn.App. 492, 315 S.W.2d 274 (1958). Such an agreement may be shown as well by circumstances and recognition as by direct evidence of a

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<sup>2</sup> Edgar Beaty testifies that the family gave up some land on the westernmost side of the Property, which may account for the discrepancy in acreage following the division of the Property into seven tracts. However, Mr. Beaty asserts that the disputed tract was not part of the forfeited land.

formal agreement where the parties have acted thereon. *Galbraith v. Lunsford*, 87 Tenn. 89, 99, 9 S.W. 365 (1888).

The general rule on title by acquiescence is state in 11 C.J.S., *Boundaries*, which reads, in pertinent part, as follows:

In order to establish a boundary by acquiescence, it is not necessary that the acquiescence should be manifested by a conventional agreement, but recognition and acquiescence must be mutual, and both parties must have knowledge of the existence of a line as a boundary line....

The question as to what constitutes acquiescence must be decided from the particular facts of the case, and no absolute rule can be applied to every case. Generally it depends on the acts or declarations of the parties interested, on inferences or presumptions from their conduct, or on their silence.... Failure to object to an encroachment with knowledge that the owner thereof claims to that line may amount to acquiescence establishing the line as a boundary....

Recognition of, and acquiescence in, a line as the true boundary line of one's land, not induced by mistake, and continued through a considerable period of time, affords strong, if not conclusive, evidence that the line so recognized is in fact the true line, and it supports an inference or presumption that there has been an agreement fixing it as the true line. Where recognition and acquiescence have continued for the period of time prescribed by statutes concerning acquiescence or for the period required by statutes of limitations for acquisition of title by adverse possession, the presumption that the line is in fact the true line or that there has been an agreement fixing it as the true line becomes conclusive, and the line as acquiesced in is conclusively established as the boundary. As established it will control courses and distances called for in the title deeds or grants, and the parties need not rely on paper title.

11 C.J.S., *Boundaries*, §§ 79 and 81 (1973); *see also Bingham v. Doles*, No. W2002-00104-COA-R3-CV, 2002 WL 32335659 (Tenn. Ct. App. June 3, 2002).

Edgar Beaty was born in 1942 and his family moved onto the Property when his father, Ernest, purchased same in 1944. Mr. Beaty testified that he grew up on the Property and lived there until he was twenty-one years old, and that he visited regularly thereafter. He recalled how the family used the Property when he was a child, to wit:



A [by Edgar Beaty]. I've been on this disputed area all my life. I can remember back when I was very small, probably six or seven maybe eight years old, we cut hickory handles in this area. Because this part right here (indicating), being an old fence row, was a pasture over here, and this was Dad's timber line. I mean, there was timber out here to be cut.... We split what we called hickory handles, just about four feet long. I was very young and I could only handle one or two....

In addition to cutting timber from the disputed tract, Mr. Beaty testified that he and his family hunted in this area as well. The record indicates that the Beaty family used the disputed tract as outlined above until the mid-1980s when Ernest Beaty hired a Mr. Clayborn to log trees from the disputed tract, to wit:

Q [to Edgar Beaty]. When Clayborn logged for your dad, you observed some trees cut on the disputed property?

A. Yes, that's when Clayborn logged it. I think it was '84 or '86.

Both Edgar Beaty and his older brother, Luther, testified separately that their father had shown them the corner of the Property (marked by a planted stone, which has since been moved). Both brothers recall that the stone marking the corner was outside the disputed area—thereby making the disputed area part of the original Property. Luther Beaty also recalled cutting timber from the disputed tract with his father.

Although the testimony of Julian Ledbetter seems to indicate that the Wrights' predecessors in interest (i.e. Tennessee Land and Timber Company) may have logged the disputed tract in the mid-1960s, the company did not continually occupy that area thereafter. However, the record does support a finding that the Beaty family used and occupied the tract continuously from at least the early 1980s until such time as the present dispute arose between Edgar Beaty and the Wrights. Donnie Wright testified but offered no information concerning occupation of the disputed tract—other than the immediate logging that led to this conflict. There is no evidence that either the Wrights or their predecessors in interest objected to the Beaty family's use of the disputed tract as described above. In short, the record shows that the Beaty family has been in continuous possession of the Property since Ernest Beaty acquired said Property in 1944 (or at latest since Ernest Beaty allowed logging on the tract in the 1980s). The record further shows that the Beaty family has maintained their possession of the disputed tract in such a way as to indicate that they claimed ownership of same. The record shows no objection or dispute of the Beaty family's use of the tract from the Wrights or their predecessors, and the line asserted by Beaty was apparently recognized by the Wrights and their predecessors as the true boundary. This proof, especially in light of the trial court's specific finding that the testimony of Edgar Beaty was credible, supports the trial court's conclusion that Edgar Beaty is the rightful owner of the disputed tract.

For the foregoing reasons, we affirm the Order of the trial court. Costs of this appeal are assessed against the Appellants, Donnie Wright and Jennifer Wright, and their surety.

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W. FRANK CRAWFORD, PRESIDING JUDGE, W.S.